

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

OMAR HILL, JR., )  
vs. Plaintiff, ) NO. CIV-13-517-D  
MATTHEW CATE, )  
Defendant. )

## ORDER

Plaintiff, a state prisoner appearing *pro se*, brought this action pursuant to 42 U.S.C. § 1983, alleging that Defendant violated his constitutional rights. In accordance with 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Shon T. Erwin for initial proceedings. The Magistrate Judge granted Plaintiff's motion to proceed *in forma pauperis*, but ordered Plaintiff to pay an initial partial filing fee. He also cautioned Plaintiff that failure to timely pay the partial filing fee would result in a recommendation that this action be dismissed without prejudice.

On August 27, 2013, the Magistrate Judge filed a Report and Recommendation [Doc. No. 8] in which he reported that Plaintiff had not paid the initial partial filing fee, and two months had expired from the deadline for doing so. Accordingly, the Magistrate Judge recommended that this action be dismissed without prejudice to refiling pursuant to Local Civil Rule 3.4(a) and *Cosby v. Meadors*, 351 F.3d 1324, 1326-33 (10<sup>th</sup> Cir. 2003).

In the Report and Recommendation, the Magistrate Judge expressly advised Plaintiff of his right to object to the same, and set a September 17, 2013 deadline for filing objections. He also warned Plaintiff that his failure to timely object would constitute a waiver of the right to appellate review of the findings and conclusions in the Report and Recommendation.

Plaintiff's deadline for filing an objection has expired, and no objection has been filed. Nor has Plaintiff sought an extension of that deadline. Accordingly, the Report and Recommendation [Doc. No. 8] is adopted as though fully set forth herein. This action is dismissed without prejudice to its refiling.

IT IS SO ORDERED this 26<sup>th</sup> day of September, 2013.



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TIMOTHY D. DEGIUSTI  
UNITED STATES DISTRICT JUDGE